

SENATE BILL No. 362

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-16; IC 36-8.

Synopsis: Employment of national guard members and veterans. Extends employment protections under the federal Uniformed Services Employment and Reemployment Rights Act and extends the rights, benefits, and protections under the Servicemembers Civil Relief Act to members of the national guard of another state during state sponsored activation. Increases the maximum age for appointment as a police officer or firefighter from less than 36 years of age to less than 40 years of age if the applicant is a veteran of the armed forces of the United States.

Effective: July 1, 2016.

Banks

January 11, 2016, read first time and referred to Committee on Veterans Affairs & The Military.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 362

A BILL FOR AN ACT to amend the Indiana Code concerning military and veterans.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 10-16-7-23, AS AMENDED BY P.L.156-2015,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 23. (a) As used in this section, "active duty"
4 means:

5 (1) training or duty under federal law; ~~or~~

6 **(2) state active duty under an order of a governor of another**
7 **state as provided by law; or**

8 ~~(2)~~ **(3)** state active duty under section 7 of this chapter;
9 performed under an order of the governor.

10 (b) The rights, benefits, and protections of the federal
11 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., apply to
12 a member of:

13 **(1) the Indiana national guard; or**

14 **(2) the national guard of another state;**
15 ordered to active duty for at least thirty (30) consecutive days.

16 (c) With respect to a member or reserve member of:

17 **(1) the Indiana National Guard; or**



(2) the national guard of another state;

ordered to state active duty, a person is not subject to remedies and penalties under this section or IC 10-16-20 for failure to comply with the federal Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., unless the member or member's dependent provides documentation to the person that the person is a member or reserve member of:

(1) the Indiana National Guard; or

(2) the national guard of another state;

ordered to state active duty for at least thirty (30) consecutive days.

(d) The rights, benefits, and protections of the federal Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. 4301 et seq., as amended and in effect on January 1, 2003, apply to a member of:

(1) the Indiana national guard; or

(2) the national guard of another state;

ordered to active duty.

(e) Nothing in this section shall be construed as a restriction or limitation on any of the rights, benefits, and protections granted to a member of:

(1) the Indiana national guard; or

(2) the national guard of another state;

under federal law.

SECTION 2. IC 10-16-20-2, AS ADDED BY P.L.156-2015, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. The following definitions apply throughout this chapter:

(1) "Military service" means:

(A) in the case of a servicemember who is a member or reserve member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, full-time duty in the active military service of the United States, including:

(i) full-time training duty;

(ii) annual training duty; and

(iii) attendance while at a school designated as a service school by federal law or by the secretary of the military department concerned;

(B) in the case of a member or reserve member of the Indiana National Guard, service under a call to active:

(i) service authorized by the President of the United States or the Secretary of Defense for a period of more than thirty

(30) days in response to a national emergency declared by



the President of the United States; or

(ii) duty as defined by IC 10-16-7-23(a) for a period of more than thirty (30) consecutive days;

(C) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; ~~or~~

(D) in the case of a member or reserve member of the national guard of another state, service under an order by the governor of that state to active duty for a period of more than thirty (30) consecutive days; or

~~(E)~~ **(E)** any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) "Servicemember" means an individual engaged in military service.

SECTION 3. IC 36-8-3.5-12, AS AMENDED BY P.L.99-2007, SECTION 214, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 12. (a) To be appointed to the department, an applicant must be:

(1) a citizen of the United States;

(2) a high school graduate or equivalent; and

(3) at least twenty-one (21) years of age, but under:

(A) thirty-six (36) years of age; or

(B) forty (40) years of age, if the applicant is a veteran of the armed forces of the United States.

However, the age requirements do not apply to a person who has been previously employed as a member of the department.

(b) A person may not be appointed, reappointed, or reinstated if ~~he~~ **the person** has a felony conviction on ~~his~~ **the person's** record.

(c) Applications for appointment or reappointment to the department must be filed with the commission. The applicant must produce satisfactory proof of the date and place of ~~his~~ **the applicant's** birth.

(d) Applicants for appointment or reappointment to the department must pass the general aptitude test required under IC 36-8-3.2-3 or IC 36-8-3.2-3.5. The general aptitude test shall:

(1) reflect the essential functions of the job;

(2) be conducted according to procedures adopted by the commission; and

(3) be administered in a manner that reasonably accommodates the needs of applicants with a disability.

The results of the general aptitude test shall be filed with the



commission. If the commission finds that the applicant lacks the proper qualifications, it shall reject the applicant.

(e) The applicants shall then be rated on the selection criteria and testing methods adopted by the commission, which may include mental alertness, character, habits, and reputation. The commission shall adopt rules for grading the applicants, including the establishment of a passing score. The commission shall place the names of applicants with passing scores on an eligibility list by the order of their scores and shall certify the list to the safety board.

(f) If an applicant for original appointment reaches ~~his~~ **the applicant's** thirty-sixth birthday ~~his~~ **(or fortieth birthday, if the applicant is a veteran of the armed forces of the United States), the applicant's** name shall be removed from the eligibility list. Applicants remain on the list for two (2) years from the date of certification. After two (2) years a person may reapply as an applicant.

(g) When a vacancy occurs in the department, the commission, upon a written request of the chief of the department, shall administer the physical agility test under IC 36-8-3.2-3 or IC 36-8-3.2-3.5 to the applicant having the highest score on the eligibility list. If the appointed applicant successfully completes the physical agility test, the applicant shall then be enrolled as a member of the department to fill the vacancy if:

(1) the applicant is still of good character; and

(2) the applicant passes the required examinations identified in IC 36-8-3.2-6 and IC 36-8-8-19.

(h) All appointments are probationary for a period not to exceed one (1) year. If the commission finds, upon the recommendation of the department during the probationary period, that the conduct or capacity of the probationary member is not satisfactory, the commission shall notify ~~him~~ **the member** in writing that ~~he~~ **the member** is being reprimanded, that ~~he~~ **the member** is being suspended, or that ~~he~~ **the member** will not receive a permanent appointment. If a member is notified that ~~he~~ **the member** will not receive a permanent appointment, ~~his~~ **the member's** employment immediately ceases. Otherwise, at the expiration of the probationary period the member is considered regularly employed.

SECTION 4. IC 36-8-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) A person may not be appointed as a member of the police department or fire department after the person has reached:

(1) thirty-six (36) years of age; or

(2) **forty (40) years of age, if the person is a veteran of the**



armed forces of the United States.

A person may be reappointed as a member of the department only if the person is a former member or a retired member not yet receiving retirement benefits of the 1925, 1937, 1953, or 1977 fund and can complete twenty (20) years of service before reaching sixty (60) years of age.

(b) This section does not apply to a fire chief appointed under a waiver under section 6(c) of this chapter or a police chief appointed under a waiver under section 6.5(c) of this chapter.

(c) A person must pass the aptitude, physical agility, and physical examination required by the local board of the fund and by IC 36-8-8-19 to be appointed or reappointed as a member of the department.

(d) A fire chief appointed under a waiver under section 6(c) of this chapter or police chief appointed under a waiver under section 6.5(c) of this chapter who is receiving, or is entitled to receive, benefits from the 1925, 1937, 1953, or 1977 fund may receive those benefits while serving as chief, subject to all normal requirements for receipt of a benefit, including a separation from service.

SECTION 5. IC 36-8-8-7, AS AMENDED BY P.L.111-2015, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) Except as provided in subsections (d), (e), (f), (g), (h), (k), (l), and (m), ~~(+)~~ a police officer or ~~(2)~~ a firefighter who:

(1) is less than:

(A) thirty-six (36) years of age; or

(B) **forty (40) years of age, if the police officer or firefighter is a veteran of the armed forces of the United States;** and

(2) ~~who~~ passes the baseline statewide physical and mental examinations required under section 19 of this chapter; shall be a member of the 1977 fund and is not a member of the 1925 fund, the 1937 fund, or the 1953 fund.

(b) A police officer or firefighter with service before May 1, 1977, who is hired or rehired after April 30, 1977, may receive credit under this chapter for service as a police officer or firefighter prior to entry into the 1977 fund if the employer who rehires the police officer or firefighter chooses to contribute to the 1977 fund the amount necessary to amortize the police officer's or firefighter's prior service liability over a period of not more than thirty (30) years, the amount and the period to be determined by the system board. If the employer chooses to make the contributions, the police officer or firefighter is entitled to receive credit for the police officer's or firefighter's prior years of service



without making contributions to the 1977 fund for that prior service. In no event may a police officer or firefighter receive credit for prior years of service if the police officer or firefighter is receiving a benefit or is entitled to receive a benefit in the future from any other public pension plan with respect to the prior years of service.

(c) Except as provided in section 18 of this chapter, a police officer or firefighter is entitled to credit for all years of service after April 30, 1977, with the police or fire department of an employer covered by this chapter.

(d) A police officer or firefighter with twenty (20) years of service does not become a member of the 1977 fund and is not covered by this chapter, if the police officer or firefighter:

- (1) was hired before May 1, 1977;
- (2) did not convert under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both of which were repealed September 1, 1981); and
- (3) is rehired after April 30, 1977, by the same employer.

(e) A police officer or firefighter does not become a member of the 1977 fund and is not covered by this chapter if the police officer or firefighter:

- (1) was hired before May 1, 1977;
- (2) did not convert under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both of which were repealed September 1, 1981);
- (3) was rehired after April 30, 1977, but before February 1, 1979; and
- (4) was made, before February 1, 1979, a member of a 1925, 1937, or 1953 fund.

(f) A police officer or firefighter does not become a member of the 1977 fund and is not covered by this chapter if the police officer or firefighter:

- (1) was hired by the police or fire department of a unit before May 1, 1977;
- (2) did not convert under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both of which were repealed September 1, 1981);
- (3) is rehired by the police or fire department of another unit after December 31, 1981; and
- (4) is made, by the fiscal body of the other unit after December 31, 1981, a member of a 1925, 1937, or 1953 fund of the other unit.

If the police officer or firefighter is made a member of a 1925, 1937, or 1953 fund, the police officer or firefighter is entitled to receive credit for all the police officer's or firefighter's years of service, including years before January 1, 1982.



(g) As used in this subsection, "emergency medical services" and "emergency medical technician" have the meanings set forth in IC 16-18-2-110 and IC 16-18-2-112. A firefighter who:

- (1) is employed by a unit that is participating in the 1977 fund;
 - (2) was employed as an emergency medical technician by a political subdivision wholly or partially within the department's jurisdiction;
 - (3) was a member of the public employees' retirement fund during the employment described in subdivision (2); and
 - (4) ceased employment with the political subdivision and was hired by the unit's fire department due to the reorganization of emergency medical services within the department's jurisdiction;
- shall participate in the 1977 fund. A firefighter who participates in the 1977 fund under this subsection is subject to sections 18 and 21 of this chapter.

(h) A police officer or firefighter does not become a member of the 1977 fund and is not covered by this chapter if the individual was appointed as:

- (1) a fire chief under a waiver under IC 36-8-4-6(c); or
 - (2) a police chief under a waiver under IC 36-8-4-6.5(c);
- unless the executive of the unit requests that the 1977 fund accept the individual in the 1977 fund and the individual previously was a member of the 1977 fund.

(i) A police matron hired or rehired after April 30, 1977, and before July 1, 1996, who is a member of a police department in a second or third class city on March 31, 1996, is a member of the 1977 fund.

(j) A park ranger who:

- (1) completed at least the number of weeks of training at the Indiana law enforcement academy or a comparable law enforcement academy in another state that were required at the time the park ranger attended the Indiana law enforcement academy or the law enforcement academy in another state;
 - (2) graduated from the Indiana law enforcement academy or a comparable law enforcement academy in another state; and
 - (3) is employed by the parks department of a city having a population of more than one hundred ten thousand (110,000) but less than one hundred fifty thousand (150,000);
- is a member of the fund.

(k) Notwithstanding any other provision of this chapter, a police officer or firefighter:

- (1) who is a member of the 1977 fund before a consolidation under IC 36-3-1-5.1 or IC 36-3-1-6.1;



(2) whose employer is consolidated into the consolidated law enforcement department or the fire department of a consolidated city under IC 36-3-1-5.1 or IC 36-3-1-6.1; and

(3) who, after the consolidation, becomes an employee of the consolidated law enforcement department or the consolidated fire department under IC 36-3-1-5.1 or IC 36-3-1-6.1;

is a member of the 1977 fund without meeting the requirements under sections 19 and 21 of this chapter.

(l) Notwithstanding any other provision of this chapter, if:

(1) before a consolidation under IC 8-22-3-11.6, a police officer or firefighter provides law enforcement services or fire protection services for an entity in a consolidated city;

(2) the provision of those services is consolidated into the law enforcement department or fire department of a consolidated city; and

(3) after the consolidation, the police officer or firefighter becomes an employee of the consolidated law enforcement department or the consolidated fire department under IC 8-22-3-11.6;

the police officer or firefighter is a member of the 1977 fund without meeting the requirements under sections 19 and 21 of this chapter.

(m) A police officer or firefighter who is a member of the 1977 fund under subsection (k) or (l) may not be:

(1) retired for purposes of section 10 of this chapter; or

(2) disabled for purposes of section 12 of this chapter;

solely because of a change in employer under the consolidation.

(n) Notwithstanding any other provision of this chapter and subject to subsection (o), a police officer or firefighter who:

(1) is an active member of the 1977 fund with an employer that participates in the 1977 fund;

(2) separates from that employer; and

(3) not later than one hundred eighty (180) days after the date of the separation described in subdivision (2), becomes employed as a full-time police officer or firefighter with a second employer that participates in the 1977 fund;

is a member of the 1977 fund without meeting for a second time the age limitation under subsection (a) and the requirements under sections 19 and 21 of this chapter. A police officer or firefighter to whom this subsection applies is entitled to receive credit for all years of 1977 fund covered service as a police officer or firefighter with all employers that participate in the 1977 fund.

(o) The one hundred eighty (180) day limitation described in



1 subsection (n)(3) does not apply to a member of the 1977 fund who is
2 eligible for reinstatement under IC 36-8-4-11.

